IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/686,741	Confirmation No. :	8292
First Named Inventor	:	Joseph Wayne NORTON		
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Examiner	:	Jeffery Swearingen		
Docket No.	:	101610.55984US		
Customer No.	:	23911		
Title	:	Distributed, Fault-Tolerant Message Store		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents
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Sir:

Appellants request review of the final rejection set forth in the Office Action dated June 12, 2008. No amendments are being filed with this Request, and this Request is being filed with a Notice of Appeal.

Claims 1-36 remain rejected for anticipation by U.S. Patent No. 6,138,158 to Boyle et al. ("Boyle"). For the following reasons it is respectfully submitted that this ground of rejection is improper and should be withdrawn.

I. The Rejection of Claims 1-33 is Improper

Appellants' claim 1 recites a method that involves calculating a plurality of destination nodes based on:

1. a subscriber identifier; and

2. a plurality of addressing functions.

Each addressing function corresponds to a topology of the network at a particular moment in time. The calculated plurality of destination nodes are queried for a message.

As will be described in more detail below, the Office Action does not clearly identify which elements of Boyle correspond to the above-identified claim elements, and accordingly Appellants' discussion below is based upon assumptions as to different ways that Boyle could be interpreted. Nevertheless,

under any interpretation, Boyle does not expressly or inherently disclose all of the aforementioned claim elements.

Boyle discloses a system in which a narrowband channel is used to provide a client device with a notification of updates to information pages, and the client device requests and receives the updated pages over a wideband channel.[1] Specifically, referring now to Figure 2 of Boyle (reproduced below), when there is a change or update to information subscribed to by mobile device 106, web server 202 sends a notification to link server 114, which in turn sends the notification to mobile device 106.[2] The notification includes: (1) one or more URLs; (2) an action type; and (3) a subscriber ID.

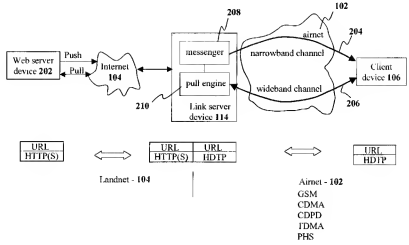

FIGURE 2 of Boyle

Mobile device 106 can then access the updated information "through a pull agent 210 via wideband channel 206 using the address embedded in the notification."[3] Thus, Boyle at most discloses that link server 114 identifies a *single* node, (i.e., client device 106) *based solely on a subscriber ID*. In contrast, the method of Appellants' claim 1 recites "calculating a *plurality* of destination nodes" based on a subscriber ID *and "a plurality of addressing functions."*[4]

[1] Abstract.
[2] Column 7, lines 12-27.
[3] Column 7, lines 48-51.
[4] Emphasis added.

The Office Action cites column 8, lines 1-13 of Boyle for the disclosure of the calculation recited in claim 1. This section of Boyle discloses that the cost of switched circuit connections is minimized by sending a notification to the user, and then allowing the user to decide "what and when to do with the update."[5] There is no disclosure or suggestion of calculating *a plurality of nodes*, or performing such a calculation based on a subscriber ID *and a plurality of addressing functions*.

The Uniform Resource Locators (URLs) of Boyle are Not the Same as the Claimed "Addressing Functions"

Based on the Office Action's interpretation of Boyle to reject claim 34 (described in more detail below), it appears that the uniform resource locators (URLs) of Boyle are being interpreted as the claimed "addressing functions."[6] Boyle, however, does not expressly or inherently disclose that URLs are addressing *functions*, but instead merely refers to URLs as addresses. For example, Boyle discloses that

- "each of the HDML pages is identified by a *distinct address*, such as an universal resource locator (URL)"[7];
- "[t]he notification comprises: *an address*-one or more URLs identifying the updated pages"[8]; and
- "the notification comprises a subscriber ID and an *address including one or more URLs* indicating those pages whose contents have been updated."[9]

Thus, interpreting a URL, which is merely disclosed as an address, as the claimed "addressing *function*" ignores the claim term "function", and instead only

[5] Column 8, lines 3-10.
[6] Because the Office Action does not specifically identify the element of Boyle that corresponds to the claimed addressing functions, this is Appellants' best guess. If, however, the Office Action has a different interpretation, that interpretation should be set forth in a formal Patent Office communication.
[7] Column 7, lines 17-19. (Emphasis added).
[8] Column 7, lines 28-30. (Emphasis added).
[9] Column 10, lines 40-42. (Emphasis added).

focuses on the term "addressing." Because the Office Action does not consider the term "function" in the rejection of claim 1, this rejection is improper.

Moreover, a URL does not correspond "to a topology of the network at a particular moment in time." In contrast, Appellants' claim 1 specifically recites that the claimed "addressing function" possesses this characteristic.

The Office Action appears to interpret the narrowband and wideband channels of Boyle as corresponding to the claimed "topology of the network".[10] Boyle does not, however, disclose that the URL and the subscriber ID are used to select the narrowband or wideband channel. Instead, Boyle discloses that the narrowband channel is selected to deliver notifications to the mobile station, and the wideband channel is selected to retrieve the information identified in the notification.

Because Boyle does not disclose each and every element of Appellants' claim 1, and the Office Action's interpretation of Boyle does not result in the method of claim 1, the rejection of this claim is improper and should be withdrawn. Independent claims 14 and 21 recite similar elements to those discussed above with regard to claim 1, and are patentably distinguishable over Boyle for similar reasons.

II. The Rejection of Claims 34-36 is Improper

Boyle does not anticipate claim 34 because Boyle does not disclose at least the calculation and forwarding recited in this claim. Appellants' claim 34 recites a first node that calculates a second and third node that store messages using *a subscriber identifier and respective first and second addressing functions.*

It appears that the Office Action interprets link server device 114 of Boyle as corresponding to the claimed "first node", the URLs of Boyle as corresponding to the claimed "addressing function", and web servers 202 of Boyle as

[10] Page 2 of the final Office Action.

corresponding to the claimed second and third node. As discussed above, the URLs of Boyle are merely addresses, and not "addressing *functions*."

Furthermore, Boyle discloses that link server device 114 *only uses* a URL to identify from which web server to obtain information. Boyle does not disclose that *both* the subscriber ID *and* the URL are employed to identify the web server from which to obtain information. Instead, the same web server that corresponds to the URL is selected regardless of the particular subscriber ID. Accordingly, Boyle does not expressly or inherently disclose a first node using a subscriber ID and first and second addressing functions to respectively calculate second and third nodes that store messages, and the rejection of claim 34 by Boyle should be withdrawn.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #101610.55984US).

Respectfully submitted,

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